viewed by the Supreme Court must depend upon whether the Fourteenth Amendment, properly construed, equally protects against the divesting of rights by judicial decisions. And although it has been ably contended[5] that under the Fourteenth Amendment the Supreme Court has jurisdiction to review a decision of the highest state court which, independently of any statute, decides that a plaintiff no longer has a right which previous decisions have recognized, the Supreme Court has thus far carefully refrained from committing itself to this doctrine.[6] It would seem, however, to be the opinion of that Court that such a decision as that made in the principal case raised no question under the Constitution of the United States which may be taken advantage of on writ of error to the highest court of a State.

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CONSTITUTIONALITY OF THE GRANDFATHER CLAUSES.—While Congress has plenary power to supervise the balloting for federal officers,[1] it is well settled that the right of suffrage is not one of the fundamental privileges or immunities,[2] and that it is competent for each State to prescribe the qualifications which must be attained by its citizens to entitle them to vote in national, as well as local, elections.[3] The Fifteenth Amendment places an inhibition upon this broad power of the States by forbidding the exclusion of any person from the exercise of the franchise "on account of race, color or previous condition of servitude."[4] The hostile attitude of many citizens and States toward the Amendment, however, has done much to render it nugatory. This opposition has finally led to the adoption in many States of constitutional provisions, whose admitted purpose is to disfranchise as many negroes as possible and yet retain the ballot for the whites.[5]

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[5]See 22 Harvard Law Rev. 182; 3 Illinois Law Rev. 195.

[6]Central Land Co. *v.* Laidley (1895) 159 U. S. 103. Mr. Justice Day, speaking for the Court in Patterson *v.* Colorado (1907) 205 U. S. 454, 461. "There is no constitutional right to have all general propositions of law once adopted remain unchanged. * * * It is unnecessary to lay down an absolute rule beyond the possibility of exception. Exceptions have been held to exist. But in general the decision of a court upon a question of law, however wrong and however contrary to previous decisions, is not an infraction of the Fourteenth Amendment merely because it is wrong or because earlier decisions are reversed."

[1]*Ex parte* Seibold (1879) 100 U. S. 371.

[2]Minor *v.* Happersett (1874) 21 Wall. 162; United States *v.* Cruikshank (1875) 92 U. S. 542; Pope *v.* Williams (1904) 193 U. S. 621.

[3]Amendments to the Constitution of Connecticut, Art. XI, providing that no one shall be permitted to vote unless he can read and write a portion of the Constitution. Amendments to the Constitution of Massachusetts, Art. XX. As to state elections, this power seems properly to belong to the State, but the necessity and reason for depriving the Federal Government of the right to stipulate which of its citizens shall participate in national elections, is not so apparent.

[4]The Amendment operated to repeal the discriminatory clauses which were embodied in the various state constitutions. Neal *v.* Delaware (1880) 103 U. S. 370. An interesting argument has arisen as to the validity of the Amendment. See 23 Harvard Law Rev. 169; 10 Columbia Law Rev. 416.

[5]Constitution of Georgia, Art. II, § 1; Constitution of Mississippi, Art. XII, § 244; Constitution of North Carolina, Art. VI, § 4; Constitution of Louisiana, Art. CXCVII, § 5; Constitution of Oklahoma, Art. III. § 4 (a).

The most effective provisions of this nature are the grandfather clauses which contain a provision requiring a specified educational proficiency with an exemption from such requirement of all who have themselves voted, or whose ancestors voted prior to a certain date, the time selected always being one previous to which the negroes were not enfranchised. In the recent case of *Cofield* v. *Farrell* (Okla. 1913) 134 Pac. 407, the Supreme Court of Oklahoma declared that such a clause, the exempting date of which was January 1, 1866, did not violate the Fifteenth Amendment.[6]

This question has never been squarely presented to the Supreme Court,[7] but in interpreting the Amendment it would seem logical to construe the words, "on account of" as prescribing motive for the determining test. Since, in testing the validity of a law, the courts may go behind the words and discover its object by the actual operation and effect,[8] the shrewdly chosen words in the grandfather clause should not be sufficient to defeat the clear purpose of the Amendment. But in passing on the validity of a clause in the Constitution of Mississippi, which denied the right to vote to all who could not understand the Constitution, it was decided that the requirement was not invalid, because there was nothing in the words to indicate such motive.[9] In the grandfather clauses, however, the presence of a date whose significance can scarcely escape judicial notice, and for the utilization of which there is no other reasonable explanation, would seem to be equivalent to an express declaration of motive within the provision itself. Furthermore, while it is evident that no efforts of the negro could accomplish the enfranchisement of his ancestors, the understanding test does not present a similar insurmountable barrier.[10] It is submitted, moreover, that the incidental exclusion of a few whites, and the failure to disfranchise some negroes, should not avail an otherwise invalid provision. Consequently, if it is established (1) that the actual purpose of the provision is to disfranchise the negro, (2) that such purpose is indicated in the provision itself, and (3) that the effect is to substantially deprive him of the ballot, there can be no doubt that the Supreme Court should hold it a denial of suffrage to the negro on account of his race. And this conclusion has already been reached in a lower federal court in passing on a qualification very similar to the one in the principal case.[11]

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[6]An earlier decision upheld this same provision. Atwater *v.* Hassett (1910) 27 Okla. 292. The Oklahoma Constitution contains the additional proviso that those who were "entitled to vote under any form of government" shall be exempt from the educational test.

[7]In Giles *v.* Harris (1902) 189 U. S. 475, the Court refused to pass upon the constitutionality of a provision resembling the one in the principal case, and dismissed the plaintiff's petition for a mandamus on other grounds. See Giles *v.* Teaseley (1904) 193 U. S. 146.

[8]Yick Wo *v.* Hopkins (1886) 118 U. S. 356. In Bailey *v.* Alabama (1910) 219 U. S. 219, it was decided that the State may not do indirectly that which it is not permitted to do directly.

[9]Williams *v.* Mississippi (1898) 170 U. S. 213.

[10]See 18 Political Science Quarterly 480, for a discussion of the adoption and effect of educational tests.

[11]Anderson *v.* Myers. (C. C. 1910) 182 Fed. 223.